DOCUMENT RESUME

ED 349 191 SO 022 006

AUTHOR Ryan, John Paul, Ed.
TITLE Lawyers and Litigation in the Popular Culture.
INSTITUTION American Bar Association, Chicago, Ill.
PUB DATE 91
NOTE 18p.
PUB TYPE Collected Works - Serials (022) -- Guides - Non-Classroom Use (055)
JOURNAL CIT Focus on Law Studies: Teaching about Law in the Liberal Arts; v7 n1 Fall 1991

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Civil Rights; Higher Education; *Law Related Education; *Lawyers; Liberal Arts; Mass Media; *Popular Culture; *Television; Undergraduate Study

ABSTRACT

This issue of Focus on Law Studies contains the following articles: "T.V. Law: Image versus Reality" (Suzanne Frentz); "Teaching about Civil Rights in the 1990's" (Cynthia Hamilton); "A Social History of Black Lawyers in Popular Culture" (Ric Sheffield); "Will the Real Lawyers Please Stand Up!" (Susan Adair Dwyer-Shick); "Equality, 'Political Correctness' and the Teaching of Law" (Gayle Binion); "Response to Professor Binion" (Albie Burke); and "Myth and Law in Integrated Studies" (Steven Spitizer, Stephen C. Hicks). A list of Mini-Grant Award recipients for 1991-92 and five book reviews also are included. (DB)

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FOCUS on Law Studies

Teaching about law in the liberal arts

FALL 1991
Volume VII, Number 1

American Bar Association

T.V. Law: Image Versus Reality

by Suzanne Frentz

[*Editor's Introduction: This article is based upon a panel presentation on "Lawyers and Litigation in Popular Culture" at the ABA Commission's 7th Annual Conference, "Litigation, Justice, and the Public Good," April 25-27, 1991 in San Diego, California. Two other conferees, Ric Sheffield and Susan Adair Dwyer-Shick, offer complementary perspectives on this topic; see pp. 4-5.*]

While a quick search of database networks reveals that little academic attention has been paid to litigation and popular culture institutions, the dominant industry of popular culture — television — appears to be more in love with the law than real-life lawyers themselves. This season we can see "Equal Justice," a renamed "Gabriel's Fire," and "Eddie Dodd" on ABC. "Matlock," Law and Order," "Night Court," "Perry Mason" movies, "L.A. Law" and "Shannon's Deal" air on NBC. "The Trials of Rosie O'Neill" and "The Antagonists" are on CBS, while "Against the Law" is the Fox contribution to the law show venue.

"Street Legal," the hit Canadian drama airs on independent stations in some markets. "TrialWatch," a morning magazine "reality" series recently replaced the soap opera "Generations" on NBC. In syndication, "People's Court," "Superior Court," "Divorce Court" and "The Judge" can be seen at various times all day, everyday. Occasionally, PBS offers "Rumpole of the Bailey." And "Court T.V.," a 24 hour cable channel on law, lawyers and courtroom trials with former CBS law correspondent Fred Graham as managing editor, arrived in July.

ABC seems excited about Steve Bochco and 20th Century Fox teaming up to provide their newest offering, "Civil Wars," which looks at the relationship between divorce attorneys. "Criminal Justice," also on ABC, is a new Fall reality-based hour that dramatizes some of this country's most notable court cases. At NBC, Lorimar's latest offering, "I'll Fly Away" is about a Southern, white prosecutor and his black housekeeper dealing with the 1960's civil rights movement. NBC also has "Reasonable Doubts," starring Marlee Matlin as a deaf district attorney.

Thus, the law-lawyer-justice television environment at present totals twenty-three programs and one entire network. Among the questions that come to mind as we mull over the quantity of television law product is image. What are the public's perceptions of law, lawyers and justice?

If a viewer just watched "Matlock," "Perry Mason," "Law and Order," and "Gabriel's Fire," he or she might think that the only way an attorney can be sure his innocent client will not be convicted of murder is to find the real killer himself. Writers use varying styles; Ben Matlock, the foxy, old, country lawyer who employs two "politically correct" investigators is a contrast to Perry Mason's cool intelligence and his two assistants. We rarely see the ensemble of actors from "Law and Order" in court but we do see these hard-working public defenders solving the mysteries and making sure there are no "holes" in their cases so that the evidence will "stand up in court."

"Law and Order" moves us from lawyer-sleuth into the category of realistic lawyer. The bustle of activity and the dilemmas public defenders deal with feel more like what we think attorneys who work with criminals and victims must cope with. Rosie O'Neill leads us again to an understanding that the trials of many attorneys are not all found in the courtroom. "Equal Justice" provides an excellent portrayal of what we know is an overcrowded and, at times, extremely frustrating court system. The overwhelming work load, woefully inadequate resources, deal-making and burnout abound.

What are the public's perceptions? No one really knows what the millions of daily viewers of television think. After fifty years, mass communication researchers are still grappling with basic methodological difficulties.

Jump from the original silver bullet theory in the early days of television, which embraced the notion that the audience was immediately and directly affected by what they saw, to the current debates. The arguments today deal with the nature of the methods, conclusions and general value of "cultivation analysis." George Gerbner, Larry Gross and their "Cultural Indicators" group at the Annenberg School of Communication at the University of Pennsylvania posit

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ABA Awards Mini-Grants for 1991-92

We received another enthusiastic response to the announcement of the fourth year of our Mini-Grant Program. Ninety applications, of generally high quality and proposing projects of a wide variety, were submitted. Screening, individual and group review, and discussions followed, culminating in seven awards:

American University (Washington, DC) – $750
Course Development on "Western Legal Traditions"
Partial funding for a one-week faculty seminar to discuss thematic and pedagogical issues for a general education course, drawing upon historical and comparative materials.
Project Director: Louise Shelley (Chair, Justice, Law & Society)

Emory University (Atlanta, GA) – $1,000
Computer Courseware on the History and Structure of American Courts
Development of software on the federal and state courts, utilizing Hypercard 2.0 for the Apple Macintosh; designed as a supplementary, self-study resource for undergraduate students.
Project Director: Micheal Giles (Political Science)

Oregon State University (Corvallis, OR) – $1,050
The Law Forum: Student Discussion and Debate about Law-Related Current Events
A series of six forums, providing students the opportunity to meet in informal settings (e.g., dorms, student union, etc.) with guest experts to discuss and debate topical/headline issues having legal significance.
Project Director: Kathleen Moore (Philosophy)

St. Mary's University (San Antonio, TX) – $1,200
Course and Materials Development for "Mexican-Americans and the Law"
Development of a new course and such resource materials as a book of readings and videotaped interviews with leaders of MALDEF and SVREP; use of student interns from law, history and political science.
Project Director: Ray Leal (Public Justice)

Stockton State College (Pomona, NJ) – $1,000
Social Science Field Course in Poverty Law
Development of interdisciplinary, general education field course, emphasizing legal perspectives on the problems of poverty and homelessness; support for field work materials for participating students.
Project Director: Marcia Steinbock (Criminal Justice)

Sullivan County Community College (Loch Sheldrake, NY) – $1,200
Programs on Women and the Law
Partial funding for a series of activities in conjunction with Women's History Month, to include speakers, panel discussions, and a feature film festival; student interest to be mobilized through competitions for best essay, art logo, and speech.
Project Director: Marie Henry (Chair, Social & Behavioral Sciences)

University of Washington (Seattle, WA) – $1,000
Course Development for "The Psychology of Mediation in the Legal Process"
Development of outline, materials, and annotated bibliography for undergraduate course on mediation; support for computerized literature search and collation of materials.
Project Director: Jane Goodman (Psychology)

Overall, the Commission favored projects that employed multiple strategies for addressing a problem or need, clarified the substantive content of the proposed activities, identified the benefits to liberal arts and/or general education, offered follow-up attention once the grant period concluded, and – where possible – would result in a tangible product. There was also an effort to insure, among the projects funded, some balance regarding subject matter and approaches. Many of the awardees for 1991-92 proposed interdisciplinary projects; unlike in past years, however, none happened to have co-project directors from different disciplines. More broadly, the Commission seeks to facilitate educational excellence, diversity, and innovation.

We encourage our readers to submit proposals in this year's competition. The probable deadline is March 15, 1992. Guidelines will be mailed in November to everyone currently on the *Focus* mailing list. The staff welcomes pre-submission conversations on both the form and substance of proposals.

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Teaching about law in the liberal arts

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College of Law

Focus on Law Studies is published twice yearly by the American Bar Association. It offers a forum for ideas, resources, analysis, and opinions on teaching about law in the liberal arts. Opinions and positions stated in individual articles are those of the authors and not necessarily those of the American Bar Association or the Commission.

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Teaching About Civil Rights in the 1990's

by Cynthia Hamilton

In 1988 the Southwest Organizing Project drafted a Bill of Rights for its community environmental program. Included were: the right to clean industry, the right to be safe from harmful exposure, the right to prevention, the right to know, the right to participate, the right to protection and enforcement, the right to compensation and the right to clean-up. Members of the Gulf Coast Tenants Organization represented residents of Louisiana's "cancer alley," a Black residential area along the Mississippi River (the 85 mile stretch between Baton Rouge and New Orleans), which houses 136 chemical companies and refineries. People of color, poor people, those without the resources to secure the property-based rights guaranteed by society are redefining rights to include economic and social arrangements previously thought to be beyond the reach of individual rights entitled to protection. This reinterpretation of rights must be seen as a natural corollary to the economic restructuring of society. Similar calls for an Economic Bill of Rights can be heard from many other quarters. According to former Senator George McGovern: ". . . It is time to think about a Bill of Economic and Social Rights that secures the blessings of a decent home and a decent job, nutrition, education, public safety and public transportation, medical care and preservation of the earth's resources." This redefinition of rights clearly indicates the need for new initiatives in our study and approach to civil rights.

We know that rights must be understood in a social and political context. The changing political environment has led citizens to recognize a variety of challenges to conditions affecting their quality of life. These challenges are expressions of a new and more comprehensive notion of rights. For example, residents in Kettleman City, California are challenging the right of Chemical Waste Corporation to burn toxic waste in their community (the company already operates a landfill in the area). The law suit will use civil rights laws to fight the waste facility. The first environmental law suit to use civil rights law was filed in 1979, as a class action, against the city of Houston, the state of Texas and Browning Ferris Industries. Stemming from a plan to site a municipal landfill in a mostly Black, middle income northeast Houston neighborhood, the suit charged the Texas Department of Health and the private disposal company with racial discrimination in the selection of the landfill site.

These law suits and the social movements from which they have evolved provide us a new and exciting expansion both of our definition of civil rights and of our approach to the study and teaching of civil rights. They force us back to the recognition, spelled out by Justice Marshall in his speech of 1986, that constitutional change has been a result of "momentous social transformation." Later, in remarks to the Second Circuit Judicial Conference (September 8, 1989) he cautioned: "History teaches us that when the Supreme Court has been willing to shortchange the equality rights of minority groups, other basic personal civil liberties . . . are also threatened."

Social movements provide the context in which new and reinterpreted legal strategies are being applied. It will be exciting to follow court successes (and failures), alongside the response of residents to litigation strategy, in a period when the judiciary is actively reversing the precedents of the Warren Court. These movements all emphasize the need for affirmative rights, and affirmative obligations of government, over the traditional protection from government.

The study of new social movements not only provides an expanded approach to civil rights but also a context for a discussion of rights that is not case

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A Social History of Black Lawyers in Popular Culture

by Ric Sheffield

Law and the media in the last three decades of American life have become inextricably linked. The vast majority of persons in the United States experience "the justice system" vicariously. Our knowledge of and attitudes toward law stem largely from the media portrayals of the legal system as opposed to first-hand experience with it. Issues of law, crime, justice, and lawyers are well represented in contemporary popular culture, particularly television and film, and nearly all participants in the legal system are consumers of this culture.

Until recently, few researchers have asked to what extent media portrayals *reflect* law in society; even fewer have asked how these portrayals *affect* law and justice in society. How are lawyers who are marginalized due to their race, ethnicity, or gender depicted? How do such portrayals influence the effectiveness of these advocates in their nonfictional legal arenas? This article will begin to raise questions about the depiction of African Americans in the legal profession, as our popular culture transcends Perry Mason.

The epitome of the fictionalized lawyer in America since 1957 has been Perry Mason, Erle Stanley Gardner's super lawyer. For nearly thirty years, other lawyers, both real and fictional, were measured by the public according to the "PM" standard. Many real life lawyers realized the dangers of public over-identification with Perry Mason. For example, prosecutors took issue with the show because it tended to condition real jurors to view defense lawyers as heroes and district attorneys as villains (Kelleher and Merrill). Other bar groups expressed reservations about the super lawyer characteristics of the fictional counsellor; no thought was given to the significance of his being portrayed by a white male very much unlike the three thousand lawyers who were members of nonwhite racial or ethnic groups or the seven thousand white female attorneys in the U.S. at the time.

Until the mid-1980's, African American attorneys were noticeably absent in film and television. "So rarely were Blacks seen that, by viewing the tube, one might have assumed that Negroes were not a part of American life or history" (Bogle, p. xi). Clearly, the historical portrait painted by these media vehicles is one devoid of Black lawyers. That absense is exacerbated by the fact that the first appearance of a Black attorney on television, fictionalized or otherwise, was Algonquin J. Calhoun played by veteran actor Johnny Lee in 1951.

Lawyer Calhoun was a character in the cast of the infamous *Amos 'n Andy* television show. Calhoun, America's first Black fictionalized lawyer to appear regularly on major, network television (CBS), was an inept, shyster lawyer who practiced law despite having been disbarred for malpractice and breach of ethics (Gianakos, pp. 31-32). Lawyer Calhoun was one of the most offensive characters on a program which has been vilified for presenting insulting and demeaning portrayals of African Americans. The show was so offensive that the NAACP passed a resolution condemning it and brought suit (unsuccessfully) to enjoin its broadcast. Among the charges set forth in the complaint was one that "Negro lawyers are shown as slippery cowards, ignorant of their profession, and without ethics." Although the NAACP's call for boycotting sponsors of the show effectively pressured CBS to take the show off the network's schedule in 1953, the show was syndicated and continued to be seen in reruns until 1966.

Black lawyers are often shown preoccupied with issues of race.

By contrast, films aimed at Black audiences in the early twentieth century presented Black lawyers favorably. In 1919, a film with an all-Black cast premiered, "The Colored American Winning His Suit," produced by the Frederick Douglass Film Company. This was one of the first films which portrayed lawyers as the product of hard work, sacrifice, and unwavering honesty and which, along with such other films as "Murder in Harlem" (1935) and "Life Goes On" (1938), influenced the attitudes of thousands of African Americans with respect to lawyers and the law.

The African American legal community more than doubled during the two decades following the premieres of these all-Black cast films depicting Negro attorneys, but portrayals of the Black bar in America's mainstream cinemas remained conspicuously absent. It was not until 1955 that a motion picture intended for white audiences presented its first Black lawyer – in fact, a judge. MGM's "Trial" featured Juano Hernandez as the Honorable Judge Theodore Motley. Although not a caricature nor depicted as a "coon" as were other Black lawyers and professional persons appearing in white film productions (Bogle, p. 105), the race of this jurist was an explicit part of the plot. A Negro judge was selected to hear a murder trial against a young Mexican American boy accused of attacking a young white girl because the town "can trust him to hang [the boy]." Thus, from the initial appearance of a Black lawyer/judge on America's big screen, the first message is that they will think and act differently than white lawyers or judges do. Implicitly, another message is that they will act from a "race conscious" perspective, presumably because they understand the consequences for others when one of their kind steps out of place.

Extensive research has failed to discover the filmic depiction of another Black attorney or judge until more than twenty years later. Even when fictional African American lawyers did appear, albeit infrequently, in movies in the late 1970s and 1980s, they assumed the role of the loyal assistant. They were almost always an assistant district attorney; rarely, a defense attorney, perhaps because it was thought that such a role would be disastrous to the defendant's chances. America was not ready for "Perry Washington" getting his client acquitted. It was also unheard of for filmmakers to cast a Black actor as a corporate attorney or as a partner in a ma-

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"Will the Real Lawyers Please Stand Up!"

by Susan Adair Dwyer-Shick

Does *The People's Court* do for law what *Dynasty* does for monogamy? Is Judge Abner Mikva on point when he says that television's Judge Wapner prepares his viewers for a knowledgeable discourse on law about as much as the doctors on *M*A*S*H* prepared their audience to perform surgery? Is Christine Drake correct when she writes in the *ABA Journal* that "real" lawyers do not watch *L.A. Law*? Are the judges in their televised courtrooms and the lawyers in their television offices only fictive characters, portrayals that could be drawn from the newest Frederick Busch novel *Closing Arguments* or from Scott Turow's *Presumed Innocent*? And who cares, anyway, whether the answers are "yes" or "no"? After all, we all know that television is a vast wasteland, save the occasional PBS series, and that a picture is never, ever worth a thousand words.

No, just *any* picture is certainly not worth a thousand words. Yet, when have any of us ever considered whether a thousand pictures could be worth a word? Silly? Perhaps. Yet, equally, a means of perception that might aid us in glimpsing another reality, or aspect thereof: an acknowledgement that the little and big screens are a part of all of our lives, whether we want them to be or not. Consequently, what I try to have most of my students – and, frankly, many of my colleagues – agree to is that good scientific inquiry requires that we consider all available data if we want to describe, analyze and, finally, to understand, the place of the legal system and the impact of its judges and lawyers, plaintiffs and defendants. To do this requires us all to confront the law, its practitioners and its clients wherever and whenever we find them. And to ask that our students do so also.

We have only to flip through the pages of any *TV Guide* or local newspaper to find data aplenty. If some of us choose not to do so, we must admit that many of our students are tuning in to the weekly adventures of Arnie, Rosie, and Perry. So, why not use those shows or movies as raw data in our classes, in our assignments, in our research? As an instructor in an undergraduate Legal Studies Program, I would be rich if I had fifty cents for every time a student stopped me before a Friday morning class to ask rhetorically, "Did you *see* what they did on *L.A. Law* last night?"

Two years ago I taught an undergraduate course for my University's Interim called "Lawyers in Film, TV, & Literature." During that month the class looked at many television programs and movies about Anglo-American lawyers. For each of these classes, it was not unusual for me to prepare ten to twelve separate video and audio tapes, and to play five, ten, or fifteen minutes from each. On occasion, I played a bit more so I could adequately develop for the students the cultural, social, political, or historical context. On some days, we watched as a class a complete program – recent *L.A. Law* and *Matlock* episodes or the very English *Witness for the Prosecution* and the equally very American *The Star Chamber*. On other days, we watched only part of a program or a film, divided into small groups, and discussed the people we had seen and the things that they had done, or not done. In preparation for the small group exercise, I assigned selections from either the ABA's *Model Code of Professional Responsibility* or the Washington State Bar Association's *Rules of Professional Conduct*. The text for the course was Stephen Landsman's *Readings on Adversarial Justice*.

There were times when planned subjects for discussion changed because the previous night's television fare was more timely. For example, we had been reading newspaper accounts of two New York lawyers who were wrestling with the ethical requirement of client confidentiality, on the one hand, and with the morality of withholding information from parents who desperately wanted to know where their children's bodies were buried, on the other. In conjunction with those, I had assigned "pro" and "con" pieces from Ethan Katsh's widely used *Taking Sides: Clashing Views on Controversial Issues*, 3rd ed., which focus on this same problem, when *L.A. Law* devoted segments of two programs to the same topic. An example of art imitating life? A good opportunity for undergraduates to look at a popular television program from a different perspective – the perspective of a social scientist assembling data.

Last semester I had a similar experience in another class, this time assigning "pro" and "con" selections on the exclusionary rule from *Taking Sides*, 4th ed. In teaching about this judicially crafted remedy, I have often found that its abstractness is hard for many students to grasp in other than the most simplistic of terms. "The judge let the perp off!" is not atypical. But I want to get beyond this perception. I want to get beyond even a discussion of so-called advantages and disadvantages of the continued validity of the rule or of its repeal, and to look at implications for law and lawyers and law and justice. Last spring's premier on CBS of *Dark Justice* provided some interesting data. In *Dark Justice* a trial judge metamorphosed

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Equality, "Political Correctness" and the Teaching of Law

by Gayle Binion

At the 1991 ABA Commission conference in San Diego, there were several provocative group discussions about the role of ideology and values in teaching and learning about law. During the session focused on the teaching of civil rights policy, numerous faculty described student reactions ranging from apathy to hostility toward studying issues of racial equality. The experiences of two political scientists, teaching in major southern universities, were especially interesting. One described recurrent student feedback in a semester-long course in public policy in which a sizable portion of the student evaluations regularly criticize the course as spending too much time [one week] on civil rights. The other professor observed that, when the activists of the Ku Klux Klan are discussed in her class on civil rights, it becomes uncomfortably apparent to her that some of the Klan's activists and supporters are the relatives or ancestors of her students. The assumption easily made by most academics that the Klan, like the institution of slavery, is universally rejected by society at large, and by the students whom we teach, may be a questionable proposition. The experience of marginalization, overlain with hostility, was repeated as well in the session on women and law, where faculty teaching this subject reported on, *inter alia*, negative feedback from colleagues who cautioned that teaching or researching this "nonmainstream" subject could be detrimental to their career advancement. The point of these anecdotes is that the environment in which we teach about law is not necessarily receptive to exploring questions of equality, not because the classroom is, as some contemporary critics would have us believe, an intimidating place for critics of leftist ideology, but rather because for significant numbers of students, and some of our colleagues, the subject is apparently of little value, interest or concern.

The experiences related at the ABA conference appear either to be in stark contrast with, or provide some counterbalance to, the great weight of contemporary "pop" literature on a phenomenon dubbed "political correctness," which is alleged to be commonplace in American universities. The "political correctness" accusations, lodged by President Bush, by an association of academics, and by a variety of media for which this is perhaps the "hype" issue of 1991, suggest that universities have fallen under the control of leftist "thought police" (including students, faculty and administrators) who, it is charged, have jettisoned the values of dialogue and debate in favor of a party line, especially with respect to women and people of color. Having read the professional literature and popular commentaries on the subject, I am struck by the tenacity with which the argument is made that the political right has somehow been silenced in academia. The problem with the critique, as I see it, is that in conflating a wide variety of their criticisms of contemporary academic life, including but not limited to, affirmative action programs, "harassment speech" codes, and inclusionary curricula, the exponents have missed or displaced the significance of what may actually be happening in academia.

For significant numbers of students and some colleagues, questions of equality are of little value, interest or concern.

What I believe *is* happening in academia, and has been developing over the past two decades, is that a long tradition of hierarchy and deference has come into question. A significant contemporary manifestation of the assault on hierarchy, which seems to elude recognition by advocates of the existence of p.c., is a demand that we acknowledge that *everyone's* speech can have consequences. The challenges to hierarchy, some far more successful than others, became apparent during the civil rights/anti-war/women's movements which became established on college and university campuses from the mid 1960s to mid 1970s, an era in which the representation of women and people of color grew rapidly in student bodies. These were the forces that not only implored the faculty to take public positions on the issues of the day as *political actors*, but also demanded *relevance* in the courses taught by the faculty. It is not surprising that it was during this same era that a process of student evaluation of professors and courses became institutionalized on campuses across the country. While it may well be true that such evaluations vary greatly in the weight accorded them by educational institutions, the fact that students began being *asked* to provide such input and that these data are to this day regularly included in faculty tenure and promotion files, signaled an inroad into a heretofore remarkably impenetrable system of hierarchy and deference. The development of ethnic studies and women's studies programs, also during these years, similarly signaled that students could demand a role in determining the direction of their educations.

What has perhaps changed the contours of the continuing challenge to hierarchy and deference in the academy is that students are no longer alone in the endeavor. The frequently made observation that many 1960s student activists are now faculty and administrators in American universities is of significance for understanding not only the sympathy that may exist for contemporary student movements *from within the faculty*, but as well the new contexts within which challenges to academic hierarchy and deference occur. It is these now middle-aged faculty who have, with some success, taken on the secrecy and rigidity of faculty tenure and promotion systems that for many generations

characterized the fraternity of scholars and immunized it from review. While challenges to hierarchical authority by their nature may be more characteristically the work of liberals and progressives than conservatives, it must be noted that in the academic context, very conservative forces outside of the hierarchy itself have attacked its immunity from review. Last year, in the very controversial case of Rosalie Tung (*E.E.O.C. v. University of Pennsylvania*), a unanimous U.S. Supreme Court rejected the argument of the academy that its faculty personnel files were not reviewable by the U.S. government agency charged with enforcing civil rights laws. The Tung case, like several others during the 1970s and 1980s, in which courts ordered faculty to divulge, *inter alia*, their votes in faculty personnel cases, raised the ire of supporters of the traditional methods of "peer" review. These cases not only undermined the power and autonomy of the academic hierarchy, but they also suggested that the speech of these faculty could have consequences, for which they and their institutions could be held to account. The tradition of presumed immunity from being questioned, from being challenged on questions of ethics, professionalism, and fairness was seriously eroded.

In a very real sense, this may be the core of the phenomenon that underlies what the conservative academic traditionalists have dubbed "political correctness." When students challenge faculty course content, their comments in classes, or the way they relate to a diverse student body, the faculty are subjected to a rule of life that has always been understood by the disempowered; speech has consequences for the speaker. As in all institutions that evolve over time, the social structure, the ethos and the power and authority relations within universities must necessarily change. For some period of time, this change may be accompanied by dislocations and unexpected challenges to the way in which we "do business." To dismiss the continuing movement for an inclusionary academy in which truly open dialogue takes place, and in which the speech of all is equally subject to criticism and rebuttal, as an attempt to enforce "political correctness" is to ignore, perhaps intentionally, the real story of contemporary higher education. It may be that the issues conflated by advocates of the existence of p.c. are indeed related, but to my mind, it is not in the way they have characterized the connection.

Gayle Binion is Associate Professor of Political Science and Chair of the Law and Society Program at the University of California at Santa Barbara, CA 93106.

Response to Professor Binion

by Albie Burke

Professor Binion's statement strikes me as defensive and over-drawn, designed to distract attention from the issue. It is undoubtedly true that sexism and racism operate as (silent) master rules that govern much of our thinking and actions. Whether that is the whole of it, however, is questionable. In the end the conclusion may well be that they are but expressions of a deeply felt human need for differentiation – the desire to have subordinate groups around to which one happily is not a member – and will someday go the way of monarchies, institutions of caste and class systems. Examples of differentiation abound in academia, including the notion of a static IQ, the assumption that grades are ranking mechanisms rather than diagnostic tools, and the pernicious search on the part of a few social scientists for confirmation that intellectual differences do exist between races.

Those matters aside, it is important to keep in mind that the issue of PC is raised not in reference to the value or importance of an idea, but to the manner in which a position is presented, defined, justified or explained and evaluated. All too often PC'ers manifest a certain nasty intolerance and unwillingness to concede doubts about the merits of their views. The protestation, "I am willing to listen to those who disagree" does not necessarily indicate an open mind. PC'ers normally do not go in for exercises in self-scrutiny. Their's is a truth fervently held with all the tenacity of a religious fanatic. PC appears more a function of Left than the Right, but that is only because there are more Left faculty. However, Liberals (moderates, if you will), also have positions about which they feel strongly and which they may on occasion promote in their teaching and writing in as unyielding a manner as anyone else (in my case, stands in favor of judicial activism, the idea of an evolving Constitution, etc). In short, we all are guilty at times of PC.

It is perhaps inevitable. After spending years of reading, thinking and teaching about a subject, one is bound to arrive at views that one believes in strongly. But as university teachers we are primarily in the business of human development. That means the focus of our efforts ought not to be the unrelenting promotion of some outlook or insight (that is the job of seminaries) but, rather, strengthening the critical and independent thinking abilities of students. To that end students need to be encouraged at all times to question not just what we say in class but also our syllabi. Students must consider what the assigned readings we list reveal about the way we have conceptualized a subject or what our treatment of an issue reveals about our own thought and values. That will not take place if we insist on seeing certain prescribed or favored views or sensibilities recorded in a blue book.

Students, of course, do not ask such questions naturally. They have to be taught how to do it. We have to begin with ourselves, by scheduling at the start of each semester a moment or two of full disclosure – particularly when the content of what we present is likely to have been shaped by our values and politics. It has to be a probing disclosure, however, not a perfunctory one. It is not enough merely to reveal that one is X and then give a defense (rationale) for a continual presentation of or an affirmation for X (many PC'ers already do that). One has to go further and frankly acknowledge that there are areas of our thought that are open to challenge, and concede (nay insist on) the tentative acceptance that must be given all human explanations including our own. The act of disclosure should even include some imaginative speculation about possible

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Myth and Law in Integrated Studies

by Steven Spitzer and Stephen C. Hicks

One of the most important goals of undergraduate education is to provide students with a broad and critical understanding of the roots of modern society. Suffolk University currently offers a two-semester interdisciplinary course for freshmen entitled "Integrated Studies," which is taught by faculty from almost all of the disciplines of the College of Liberal Arts and Sciences. The course utilizes a wide range of materials from literature, the arts, as well as the behavioral and physical sciences to examine enduring and transitory features of human experience.

The popularity of interdisciplinary courses of this sort has been growing in recent years, but little consideration has been given to the question of what might be done in such courses to systematically examine the role played by law and legal systems in the ordering of social life. Students are rarely conscious of the values, beliefs and structures of consciousness that shape their lives. Particularly "invisible" in this regard is the impact of law as a psychological, political, philosophical and social framework for organizing human relationships.

When it is approached in this way, law seems to bear a number of striking similarities to myth. Law and myth are both responsible for establishing the conceptual framework through which society is ordered. They not only determine what conduct will be regulated by society and what is to be left up to the discretion of the individual, but they also perform vital functions in "rationalizing" on a number of different levels. Law and myth help us create a sense of order where there is only arbitrariness, a sense of justice where there is imbalance, a sense of meaning where only randomness is apparent.

But myth and law not only create stability where there is disorder, they also provide a foundation from which to attack and challenge orders that fail to reflect the deepest commitments and values of a culture. Myth and law, in other words, may operate as the basis for criticizing as well as reifying our sense of reality.

If we approach law and myth as parallel efforts to, on the one hand, critically judge a given social reality against deeper values and, on the other hand, reaffirm our commitment to the values implicit in that social reality, it is clear that these social constructions embody and reveal important contradictions of social life. In law, the classical distinctions between positive and natural law, justice and mercy, formal justice and social justice, liberty and social equality, democracy and fundamental rights, legislative sovereignty and judicial review, judge-made law and legislation, and individual and community interests present these antimonies in bold relief. In myth, we need to distinguish between beliefs which legitimate and those which undermine, between core concepts which strengthen commitment to social institutions and practices and those which bring these institutions and practices into dispute.

During the spring semester of 1991, a symposium was held to explore the connections between law, myth and the foundations of social order. A major goal of the symposium was to involve instructors of the Integrated Studies course at Suffolk University in a dialogue about new approaches to the incorporation of socio-legal themes into the course. A number of important insights were derived from the symposium. Perhaps most interesting was the examination of the relationships between gender, law, myth and patriarchy.

Patriarchy, Law, and Myth: Mythological and Legal Cases

Legal scholars have expressed increasing interest in the "maleness" of law and the extent to which legal reasoning, institutions and practices are embedded in a patriarchal system. In light of the connections between myth and law that have been suggested here, it may be useful to examine how both mythological and legal materials might be used in approaching these issues in fresh ways.

Consider the role of Athene in classical Greek myth. More than simply the daughter of Zeus, Athene reveals subtle yet significant connections to a patriarchal vision of society. In *The Odyssey* she aids the hero Odysseus in his affirmation of the patriarchal role and his assertion of authority vis-a-vis the faithful Penelope and the suitors who would rob him of his "property." In *The Orestia* Athene acquits Orestes of the vengeful killing of his mother Clytaemnestra, thereby asserting the "justice" of male

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domination and the "injustice" of attempts at female revenge. It is Athene, as well, who supplies Perseus with the shield he needs to slay Medusa (a representation of the Great Mother or female goddess) without being turned into stone. In all of these cases, it is possible to teach what may be understood as appropriate and inappropriate mythic roles for women to play and, in the process, unravel the mysteries of patriarchy. To the extent that Athene presents an "acceptable" image of female power in male dominated society, we not only learn a great deal about the ordering of ancient societies, but also gain some additional insights into the legal order of our own.

Yet myth may not only replicate the structure of male domination, it may also call that domination into question. The representation of Creon in Sophocles's *Antigone* is a case in point. There is a moment in the play when Creon spells out his concerns about letting this "girl" (Antigone) disobey his edict. Anarchy will follow, he says. After all, how can a man be thought to rule the state if he cannot control the household members. The State, in other words, is but the family writ large. This, of course, is a classic statement of the patriarchal rule of law. But at the same time, in this play, Sophocles has positioned the speech so as to make it profoundly ironic. Creon is on the verge of bringing disaster to himself and to his family, and he is doing it under the aegis of the patriarchal conception of the universe and the state. In this sense, Sophocles is using the myth to critique the patriarchal relationships that the play reveals.

Moving to more modern materials, let us consider how a contemporary legal case can also shed light on the interrelationships between law and myth. In the case of Baby M, a contract was signed by a woman who agreed to be artificially inseminated and bear a child for a childless couple. After the child was born, the woman refused to give it up to the family and a series of court cases ensued. What is perhaps most interesting about these cases is their implication for understanding how the process by which we construct meanings — in this case legal meanings — determines the outcome of the case. We are interested in exploring how mythic frameworks relate to the construction and deconstruction of patriarchy in social systems.

Starting with the assumption that the metaphors chosen for legal reasoning are decisive and that they reveal underlying beliefs of society's judicial system, we can identify a number of alternative interpretations in the case of Baby M. Perhaps the dominant legal metaphor, and the one actually adopted in this case, is that of commercial contract. The issue was cast in terms of the question of whether specific performance would be granted for the contract in question. In this instance, the contract metaphor tends to favor the father, since the dispute is understood in the context of a confrontation between a "surrogate" mother and a "natural" father. If we use the concept of "surrogate," the contract will necessarily favor the "natural" father. Stepping outside of this context for a moment, it is no longer clear why the mother should be "denatured" in this fashion and the father should be seen as possessing "natural" rights.

Instead of this approach, suppose we apply an architectural metaphor. Imagine that an architect draws up plans for a house at the request of a woman client. The woman decides to use only 50% of the plan and uses her land and money to build the house. The male architect then claims one-half ownership based on his initial contribution. Utilizing the same contract model but changing the underlying meanings (mythic structure) in this fashion would lead to a different result. We would, in other words, think it bizarre to award the commodity (in this case the baby/house) to the architect/father who contributed one-half of the genetic material but did not utilize any of his own resources to directly "build" the child.

Other legal interpretations are possible (e.g., the law of custody, bastardy, adoption, etc.) in the Baby M case, and each contains within it a series of framing constructs which are instrumental in shaping the outcomes of the conflicts to which it might be conceivably applied. To the extent that this shaping uncovers deeply internalized myths, the pedagogical possibilities of this approach become clear. The study of both myth and law can be undertaken to explore the hidden structures that give shape and substance to consciousness and practice in modern social life.

In particular undergraduates may become sensitized to the myths of preexisting law, law's certainty, law's gender neutrality and to law's own assumptions of a stable social context in which disputes are aberrational and resolutions only adjustments. The study of myth as it is played out in law illuminates the process of socialization insofar as law is one of its primary vehicles.

Steven Spitzer is Professor of Sociology and Stephen C. Hicks is Professor of Law, both at Suffolk University, Boston, MA 02108.

ABA Conference on Global Themes in Legal Studies

The ABA Commission's 8th annual higher education conference will be held April 23-25 (Thursday-Saturday) in Rye, New York.

Beyond Our Borders: Global Themes in Legal Studies will be the theme for the conference. The opening session will focus on international human rights. Other panels will explore such topics as lawyering, access to justice, and constitutionalism in cross-national and global perspective. Workshops will offer modular teaching strategies and resources.

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This is a *national* conference. We welcome applications from faculty, deans, and organization-based educators around the country. *The conference is designed primarily for faculty, now teaching American-focused courses, who wish to add a global dimension.* Accommodations and group meals, but not travel expenses, will be provided for about 60 invited participants.

Application deadline is January 31, 1992. Those wishing to participate should send a *c.v.* and a letter of application to:

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TV Law: Image and Reality
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the theory that television "cultivates" in the audience images of places, people and values, and that "heavy television viewers perceive social reality differently from light television viewers," even when other factors are held constant. Focusing on fear of crime and perceptions of violence in society, the Gerbner research indicates that, in comparison to light viewers, heavy television viewers tend to see the world as a more "mean and scary place."

Based on studies in Australia, Britain, Canada, and the United States, support for the cultivation analysis interpretation is inconsistent. Concerns include that cultivation analysis looks at overall viewing without regard to specific content, that television is only one source of information (which is most likely to be effective when other sources are lacking), and direct experience with a phenomenon must moderate the influence of the television image on the subject's reality.

While Gerbner only looks at the "fear of crime" area, Dominck found that there was a high correlation between T.V. viewing and knowledge of arrest rights among 5th graders. Potter and Chang offer evidence in their research that viewing dominance appears to be a better predictor of cultivation at the program type level than at the more general level of balance between television viewing and non-viewing.

Slater and Elliot provide evidence which suggests that, of the viewing/reality variables, the most important predictor is perceived realism of a law enforcement program, a variable generally excluded from cultivation analysis studies. Given that reality perception is perhaps the critical predictor available, there is really no sound reason to assume that the viewing of a large number of programs, even of a specific type, would necessarily have any greater impact on measures of social reality than the regular viewing, or perhaps even occasional viewing, of one or two programs over an extended period of time. We know reality formation is a complex process, so models of it must be capable of handling complexities.

Move from empirical impressions of public perceptions to experiential impressions. While writing for CBS Television's "The Young and the Restless" for five years, this writer was impressed with the audience's perceptions of social reality and dramatic realism. From mail and interviews, one learns that viewers are well-informed and involved in accuracy of detail, show and character history, story lines, and motivations. It is the case that attorney-writers and consultants are employed. The audience assumes research is done. It stands to reason that what the audience expects of serial drama would also be expected of episodic drama. Through television looking at itself, documenting itself as an industry, an art form, as a mediated communicator, the audience has grown more sophisticated in its knowledge of the work of writers and producers.

There is no such thing as one mass media image of law, lawyers, and justice . . . there is a spectrum.

Of course, television's main method of knowing how viewers perceive the product, even though it is a gross measure, has been and continues to be the ratings. While network executives and television historians will tell you that T.V. genres move in cycles of popularity, the fact is that lawyers and law enforcement programming are rating well now and have been a staple of television programming since the days of a thinner Perry Mason, the Defenders and a host of others.

If television presents a proper mix of viewpoints, genres, and types of creativity, then the medium embodies a basic principle: American popular culture reflects American society. There is no such thing as *the* mass media image of law, lawyers, and justice. What one finds in American popular culture is a spectrum as broad as society itself.

University students and faculty provide support for mass communication research on the importance of perceived realism. Informal polls reveal that they considered some T.V. law drama "pretty realistic." One interviewee highlights the fact that impressions of realism can come from knowledge gained from viewing other television genres' content as well as using other media. "Sometimes on 'L.A. Law' you can tell if the story is based on a real case." Indeed, consider our experience earlier this year, when we learned of the case of a high school guidance counselor who seduced her student into murdering her husband. We saw actual trial footage on network and cable news programs because cameras are permitted in some courtrooms. We saw the same and more tape on syndicated programming, including "Entertainment Tonight" and NBC's "TrialWatch," and learned, from the same sources, of inquiries for the purchase of the rights to produce a movie-of-the-week. Sex and violence. Guaranteed ratings. Television law by and for the people. As Anthony Chase wrote, "The law is not just a technical skill but a discipline with implications and ramifications throughout the culture, and not just the elite classical culture but that of the people as well."

Suzanne Frentz is Associate Dean of the College of Communication and Fine Arts, Loyola Marymount University, Loyola Blvd. at West 80th St., Los Angeles, CA 90045.

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Black Lawyers
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jor law firm. Presumably, Blacks were not credible as managing partners with authority to give orders and set policy for the firm. In this, the media reflected the historical and social reality for the nonfictional Black bar.

Black males, although clearly not well represented among the fictional bar, still easily outnumber their Black female counterparts. The handful of Black actresses who have been cast as lawyers in the "politically correct" series of the 1980s and 1990s continue to play secondary roles, usually as government sector lawyers, with one occasionally cast as a law clerk hoping to be hired by *L.A. Law's* MacKenzie, Brackman.

Most, if not all, of the new lawyer shows have one, and often only one, Black actor cast as an attorney regular. As might be expected in the so-called "post civil rights" era, these lawyers are presented as competent, ethical attorneys. Gone are the days of the broad facial expressions and tongue-twisting abuse of the English language; so long to the Lawyer Calhouns speaking in tortured, exaggerated Black dialect replete with every imaginable malapropism. Yet, they continue to assume a secondary or support role to the lead or principal white attorneys. Television audiences are never exposed to Black solo practices and Black law firms, the environment in which the majority of African American attorneys practice.

Furthermore, Black lawyers are often shown preoccupied, sometimes almost obsessed, with issues of race. Nearly every case assigned to African American lawyers on television becomes a "cause" involving actual, suspected, or perceived racial injustice. It would seem that fictional Black lawyers must resolve a conflict involving their participation in an unjust system before they can proceed rationally and in their clients' best interests. Many of these programs have used story lines which present Black lawyers who orchestrate litigation in order to achieve social change or to promote a sometimes questionable Black agenda. All too frequently, these African American lawyers and judges are seen being challenged by their "communities" for forgetting their "Blackness."

There seems to be a new type-casting at work, one which requires fictional Black lawyers to assert and affirm their cultural pride as a condition of employment. One can only speculate whether such a litmus test will ultimately be adopted by the public in general. Do Black clients actually question the commitment of Black lawyers to the interests of African Americans? Are Black lawyers viewed as qualified primarily to represent victims of discrimination in civil rights cases? Hopefully, such questions will be answered by creative social science research, which can also provide the basis for classroom discussion of African-American lawyers.

Ric S. Sheffield is Assistant Professor of Legal Studies and Sociology at Kenyon College, Gambier, OH 43022-9623. Previously, he was assistant attorney general for the state of Ohio, serving in the civil rights and consumer protection divisions.

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right before our eyes into an avenging after-hours righter of the very injustices that, by law, he had to permit in his daytime courtroom. Are there some real judges like this? Hardly likely. Do some real students see themselves in such a role after graduating from law school? Surely. Exploring those reactions provides opportunities not only to examine the exclusionary rule but also our understanding of law, the concept of justice, and the place of the legal profession in American society and culture.

In the end it is not all that important whether "real" lawyers watch *L.A. Law*. And it is also not all that important whether the television or movie lawyer is "real." It is important, however, that as instructors and advisors we realize that many of our students and advisees do watch such productions on their TV's and at the local movie house. Using these items, selectively, carefully and appropriately, we can enlarge the data base on which we draw in order to teach our students to be increasingly critical analyzers of fact and fiction, no matter the subject. These are skills that liberally educated persons very much need.

Susan Adair Duyer-Shick is Assistant Professor of Legal Studies in the Legal Studies Program, Pacific Lutheran University, Tacoma, WA 98447.

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non-rational sources for our views. Thus, though a Liberal might persuasively inventory the benefits of greater equality and freedom of thought, one's disclosure of a background on the "wrong side of the tracks" as a child of parents ineligible for membership in the local country club might suggest to students the possibility of sources other than reasoned analysis for embracing a social order free of constraint. If we were to do all of that, PC would cease to be an issue.

There is a precedent supplied by the legal profession. It has been wrestling with the need for, and the implications of, disclosure of what is behind our thinking ever since the Legal Realists first pointed out that the opinions written by judges frequently did not "really" explain the decision or the factors operative in producing a given result. Academics would do well to apply some "realism" of their own when professing their views. Though it is sometimes difficult to draw the line, we must guard against politicizing our enterprise and using the classroom as a pulpit. The cause may be a good one, but the act is still unprofessional and the idea of the university has been violated.

Albie Burke is Professor of History at California State University, Long Beach, CA 90840.

Comrade Lawyer
by Robert Rand
Boulder: Westview Press, 1991. 166 pp., $14.95 (paper).

Reviewed by Louise Shelley

The book brings to life the work of the defense attorney in contemporary Moscow. Following in the tradition of Dina Kaminskaya's highly readable *Final Judgment*, most of the book focuses on a unique and complex homicide case that is eventually resolved with some modicum of justice after great suffering to the defendant. Rand's lively and insightful account provides readable digressions which explain the nature, structure, and operation of the bar, the objectives of criminal justice reformers in the *perestroika* era and the contemporary crime situation in the USSR.

The attorney for the accused murderer describes the central case as one of the worst she can imagine, but it is not as bad as the focal homicide case in Kaminskaya's *Final Judgment*, where two innocent men are sentenced to the death penalty or an infamous Byelorussian case in which a dozen individuals were sentenced (some executed) for a serial murder they did not commit. Rather, this is a case of a typical drunken worker engaged in a brawl that resulted in a death.

Rand benefitted from the openness of the bar in the *perestroika* era, spending eight months observing the operations of a legal consultation office in an area of Moscow. He accompanied the lawyers to their trials, their appeals and sat in on the low-cost consultation sessions that defense counsels provide to the public on a walk-in basis. His narrative makes clear that there is an acute shortage of lawyers, making it difficult for citizens to protect their interests. But this shortage is not a consequence of the monopolistic practices of Soviet lawyers. Rather, it results from the Ministry of Justice's conscious decision to limit the number of defense attorneys. The USSR thus has only one defense lawyer attorney for every 1,200 citizens, a number far below that of most European societies and way below the U.S. This constraint on growth has made it difficult, as Rand so clearly points out, to implement what was heralded as a major reform of *perestroika*, the ability for legal counsel to have earlier entry into the legal proceedings.

The civil justice system atrophied under Soviet rule, a consequence of the state ownership of most property. Criminal law increased in importance because of the state's emphasis on order. This balance is reflected in Rand's book. The focus of his discussion is on the criminal trial, but he also addresses the rather cursory attention most attorneys give to the bulk of problems brought to their attention: housing, family law, and labor cases. Economic cases have been of minimal importance to the legal community. The development of a private sector, now employing five million people in cooperatives, has promoted many legal consultation offices to serve these new businessmen. Rand points out several important changes which have accompanied *perestroika*. These include the greater use of release on one's own recognizance before trial and the increased independence of the judiciary. But he suggests that the most dramatic reforms in criminal law will not be forthcoming. As he points out, the State is not yet ready to surrender its superior position and the legal reformers are seeking greater change than the conservative population will tolerate.

There is one weakness in this otherwise excellent book. It is the failure to explain how much the Soviet legal system has changed in response to even limited market conditions. Rand indicates these changes but does not acknowledge their full impact. Rand's discussion of the system of job assignments after law school fails to recognize the extent of change in the choice of legal specialization. Once lawyers eagerly sought positions in the criminal justice apparatus because they were close to the Communist Party and hence prestigious. But the decline of Party authority and the rise of markets has made young graduates now seek jobs as legal advisors in enterprises, once positions of last resort. The other important impact of the market is the decline in access to legal services. Previously, legal services were affordable and accessible, but with the recently improved pay for lawyers, the ordinary citizen is enjoying less accessible justice at the moment that he can expect a more fair chance in court. The book is a very useful addition to classes which try to provide a broader perspective on the judicial process, access to justice, and the nature of the legal profession in different political systems.

Louise Shelley is Chair of the Department of Justice, Law and Society at The American University, Washington D.C. 20016.

The Justice Broker
by Herbert M. Kritzer
London and New York: Oxford University Press, 1990. 233 pp., $35.00 (cloth).

Reviewed by Paul Wice

The Justice Broker by Herbert Kritzer is a fascinating study based on a compilation of material from the Civil Litigation Research Project (CLRP). Students of the American legal system may experience *deja vu* when reading this treatise, since the findings of the CLRP have appeared in eight journal articles over the last ten years with several prominent public scholars serving as co-authors with Kritzer (i.e., Kristen Bumiller, William Felstiner, Joel Grossman, Austin Sarat, and David Trubek). Kritzer has carefully pruned the mass of data from the CLRP and organized it into an intelligent, succinct, and thought-provoking analysis of how the nation's legal system disposes of its "ordinary litigation."

Undermining the significance of this important study are the age of the data and the limited number of jurisdictions sampled. Despite the author's efforts to portray his treatise as a comprehensive description of the operation of our nation's civil courts, with special attention to the interaction between litigants and their attorneys, it has been over a decade since these cases were litigated in only five federal judicial districts (in each district approximately 300 cases were selected, equally divided between the federal and state courts). How has civil litigation evolved during this twelve

year period? Has the omission of cases from New England, Middle Atlantic, Plains, Rocky Mountain, and Pacific Northwestern states compromised the ability of the author to generalize from his findings and draw conclusions on a national basis?

One of the major thrusts of the book is Kritzer's belief that lawyers who engage in ordinary litigation are not simply fulfilling their role of "professionals," but are acting in a much more pragmatic capacity as "brokers." He carefully defines both concepts and illustrates how they apply to the style in which lawyers both interact with their clients and dispose of their cases. Although this dichotomy of the lawyering functions may oversimplify the wide range of other responsibilities which lawyers normally perform (advising, researching, drafting documents, and providing emotional support), his analysis probably reflects the volume's major scholarly contribution.

In addition to the Kritzer's ability to boil down the massive amount of data collected by the CLRP into a coherent discussion of how ordinary cases are litigated, a possibly even more important accomplishment is his creative application of a quantitative perspective to a series of legal topics that historically have been mired in a much more traditional mode of analysis. I was especially intrigued by several of the models used to measure the impact of lawyer effort and to evaluate the outcome and relative degree of success experienced by each of the parties. Kritzer lucidly explains how the zero-sum game approach to comprehending the adversarial struggle is inappropriate; in its place, he suggests several models for understanding success from the varying perspectives of lawyer, defendant and plaintiff.

My only nagging problem with the book is its concluding chapter, where the author chooses to depart from his tightly written, soundly reasoned analysis to engage in a highly pejorative policy analysis of alternative forms of dispute resolution which may improve the quality and accessibility of legal services. Nevertheless, Kritzer has admirably performed a major service for the public law field by his innovative and incisive presentation of the CLRP data.

Paul Wice is Professor of Political Science at Drew University, Madison, NJ 07940.

Democracy in Black Africa: Survival and Renewal
by John A. Wiseman
New York: Paragon House, 1990. 228 pp., $22.95 (cloth).

A Democratic South Africa?: Constitutional Engineering in a Divided Society
by Donald L. Horowitz
Berkeley: University of California Press, 1991. 293 pp., $24.95 (cloth).

Reviewed by Joshua Lazerson

Sub-Saharan Africa is in the throes of its second period of "democratization." While the west focuses on events in eastern Europe, popular demands for political change in Zaire, Zambia, Togo and other African states have received little attention outside of Africa itself. The recent books of John Wiseman and Donald Horowitz are thus to be welcomed both by students of African politics and by those with international law and society interests.

Wiseman's work provides both an overview of Africa's first, immediate post-colonial period of widespread democracy and of its demise. He presents a series of case studies examining those few states which have maintained democratic systems (Botswana, The Gambia, Mauritius, Zimbabwe at press time) and a substantially larger list of states which have struggled through periods of democratic rule or are currently attempting revivals of democratic systems.

Wiseman focuses as much on the history and interplay of economic and social conditions and the vagaries of personal politics, as on the structures of constitutions and governments. This makes his book particularly useful for courses which involve interdisciplinary study of legal structures in the context of broader social, cultural, political and economic factors. Perhaps of most interest here would be his discussion of Nigeria, the most populous of African states. Nigeria is also ethnically and religiously complex, and was the site of the Biafran war in 1967. Wiseman provides a comprehensive analysis of the forces leading to the subsequent breakdown of democratic institutions in Nigeria, and the measures, political and constitutional, that have been taken by a succession of military and civilian governments toward the end of de-ethnicizing Nigerian party politics and bringing back democratic, multi-party government.

Writing recently with reference to Nigeria, George Kieh suggested that "political rights must be derived from a democratic economic tapestry." The failure to give this notion more prominent consideration in the South African context is one of the few failings of Donald L. Horowitz's *A Democratic South Africa?*

The first part of the work is dedicated to a discussion of conflict and meta-conflict; the historical roots which underpin contemporary South Africa, and the now manifold conflicting, even diametrical understandings of the nature of South African society which impinge upon, and will mediate, the creation of a fruitful post-apartheid South Africa.

Horowitz does not shy away from the complexities of South Africa's overlay of race and ethnicity. Rather, he advocates the creation of a political and constitutional structure which will *acknowledge* that diversity. The problem of structuring electoral, administrative and judicial systems is, in fact, his primary concern. He believes that structures must be adopted which will promote vote pooling, so promoting voting across ethnic lines while increasing the possibility of minor party participation in government.

This is a sophisticated and at times both highly technical and theoretical analysis. Only toward the end of the book does Horowitz address the question of what South Africa's gross, race-based inequalities in every sphere of existence could mean in the creation of a new society. Horowitz suggests that those who have suffered will continue to suffer in the first post-apartheid years. Yet he is guardedly optimistic that black discontent will not itself prove an insurmountable barrier to the realization of a democratic system, and that the transition to a government of all South Africans, and the provision of political rights therein, will, in a sense, buy time for an emerging democratic government, citing Mexican and European examples.

South Africa, however, is not Mexico, or France. Thus, it is all the more difficult to predict how the millions of people living a stone's throw from the affluent minority will cope with the reality of persistent marked inequalities. The challenges a post-apartheid regime

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faces, particularly the economic welfare-oriented challenges, will be immense, and the maintenance of a fledgling democratic system, if so birthed, will be but one challenge. Both the optimism and the guarded nature of that optimism one finds in Wiseman and Horowitz, therefore, seem well placed.

Joshua Lazerson is Project Manager for the ABA's Commission on College and University Nonprofessional Legal Studies; he holds a Ph.D. in history, having specialized in southern Africa.

Promises to Keep: African-Americans and the Constitutional Order, 1776 to the Present
by Donald G. Nieman
London and New York: Oxford University Press, 1991. 275 pp., $29.95 (cloth); $9.95 (paper).

Reviewed by Malik Simba

In 1966 Loren Miller published his survey history of the *United States Supreme Court and the Negro.* However, as this exceptional work has long been out-of-print, many who teach race relations law have been somewhat limited in their pedagogy. Donald Nieman's new survey history, *Promises to Keep,* brings welcome relief for these teachers. In keeping with the standards of excellence established by Miller, Nieman's book combines social, political, and constitutional history to narrate how racism, institutionalized in slavery and discrimination, "played a crucial role in the evolution of constitutional doctrine . . . and proved to be the nemesis of the Union."

In seven short, but analytically dense chapters, Nieman dissects not only how the life of constitutional law revolved around the illogic of racism, but also how "Black leaders understood that the general language of the Constitution made it a malleable document whose meaning was subject to redefinition through political and legal processes . . ." Nieman's emphasis here is thematic: that African Americans, recognizing very early that the "land of the free was the home of the slave," together with their "white allies," fought and victoriously transformed modern American constitutionalism "to its self-proclaimed equalitarian ideals."

As an undergraduate text, Nieman's book will allow students to examine and reflect on slavery's solidification in the constitutional order by the convention of 1787 and its destruction by the Civil War and the Amendments that truly revolutionized American democracy. Readers will also understand how the Supreme Court tempered this revolution with the infamous doctrine of "separate but equal" and how the NAACP and its doyen of law, Charles Hamilton Houston, as "agents of change," pressured the second revolution in constitutional law "with all deliberate speed." Nieman investigates the failure of this deliberation in his last chapter, "The Elusive Quest for Equality."

This elusiveness is clearly demonstrated in Nieman's analysis of the Reconstruction era's deferral of the commitment to equality by white southern redeemers determined to win the peace through the terrorism of lynching and lynch law. The frustration of federal authorities trying to uphold this commitment was expressed by one distressed federal attorney commenting on racism and jury deliberation: ". . . the law is plain . . . but I can't make a white democratic juror believe colored witnesses . . . I can't keep politics (of race) out of the human mind." This section draws its strength from Nieman's knowledge gained from his previous research on the backdrop to this period, *To Set Law in Motion: The Freedman's Bureau and the Legal Rights of Blacks, 1865-1868.*

One of the inherent problems of writing such concise survey texts is the difficulty in selecting the historical parameters. The inclusion of a chapter on the colonial background, which was the seed time of the convergence of race and law, would have greatly enhanced this excellent work. One should never forget that *Mima Queen v. Hepburn* (1806), the first Supreme Court case that restricted the freedom of African Americans by constitutionalizing the legal rule —*partus sequitur ventrem,* had its antecedents in the colonial law of slavery.

All in all, however, *Promises to Keep* will force students and scholars alike to reflect on the paradoxical relationship of racism to law, and hopefully, provoke a different type of contemporary dialogue on the dilemmas of equality within a living constitutional order.

Malik Simba is Associate Professor of African American and Ethnic Studies at California State University, Fresno, CA 93740-0100.

News

Bill of Rights 2000, A Historic Conference Commemorating the Bill of Rights Bicentennial. "Bill of Rights 2000," sponsored by the American Bar Association in cooperation with Virginia co-sponsors will convene in Williamsburg, Virginia, December 15-17, 1991. Virginia Governor L. Douglas Wilder will deliver the keynote address. Other confirmed panelists and speakers include U.S. Supreme Court Justice Antonin Scalia, U.S. Solicitor General Kenneth W. Starr, ACLU President Nadine Strossen, and New York Times journalist Anthony Lewis. Sessions will explore challenges to the Bill of Rights as we go into the 21st century. A number of the panels will be taped for broadcast on PBS next year. Special conference hotel rates and air fares are available. Contact: Norman Gross, (312/988-5730), or Jill Lewis, (312/988-5363); American Bar Association, Public Education Division, 541 N. Fairbanks Ct., Chicago, IL 60611-3314.

Dispute Resolution. The ABA's Standing Committee on Dispute Resolution is now offering a 1,600 entry annotated dispute resolution bibliography. The bibliography is a joint project of the Standing Committee, the Ohio State University College of Law and the Harvard Program on Negotiation. The bibliography includes books and articles published in Australia, Canada, Great Britain, New Zealand and the United States. Entitled "Dispute Resolution: A Selected Bibliography," the publication is available from ABA Order Fulfillment, 750 North Lake Shore Drive, Chicago, IL 60611, 312/988-5555. The cost is $30.00 and $3.95 for shipping.

Carleton University in Ottawa, Canada has instituted a new graduate (M.A.) program in Legal Studies, designed for students from social science and humanities backgrounds who wish to develop a critical understanding of law. Key areas of inquiry include class, race and gender relations in the context of law, law's interaction with the state, and the limits and possibilities of law as a means of social transformation. For information, contact Alan Hunt, Director of Graduate Studies, Department of Law, Carleton University, Ottawa, K1S 5B6, Canada.

[*Editor's Note: The following are excerpts from reports on the fruits of ABA Mini-Grants to colleges for 1990-1991.*]

Western Civilization Through Law

The University of New Hampshire used an ABA Mini-Grant to sponsor two faculty workshops on teaching about law in the liberal arts.

In the first workshop – teaching the undergraduate courses in Western Civilization and American history through law – twelve faculty from the History and Political Science departments and the Humanities, Justice Studies and University Honors Programs participated in a colloquium led by the invited speaker, Professor David A. Funk of Indiana University School of Law.

Major topics covered in the presentation and ensuing discussion were the conceptual and organizational problems of integrating legal studies into undergraduate *survey* courses in history, the availability of bibliographical resources, especially translated primary sources and case studies, for students and instructors, and teacher preparation. Professor Funk identified a wide range of historical events or themes which could be explained and illustrated using legal materials, although it was the consensus of the discussants that law should be viewed as constitutive of history and not merely reflective of historical change. A revised version of Professor Funk's article, "Legal History as a Key to Western Civilization," and comments by W.R. Jones, "Western Civilization through Law," and Lucy E. Salyer, "The Constitutive Nature of Law in American History," have been published in *Legal Studies Forum* 15 (1991): 45-64.

The focus of a second faculty workshop was the role of legal studies programs in undergraduate liberal arts curricula and the anticipated benefits or problems of establishing a legal studies program at the University of New Hampshire. The guest speaker, Professor John R. Cassidy, one of the faculty founders of a legal studies program at Ramapo College in New Jersey, gave a comprehensive and frank account of the conception, organization and operation of the Ramapo program, providing discussants with a large amount of written material dealing with course descriptions and syllabi, evaluations, etc. Participants discussed such matters as the "cross-listing" of courses of instruction, the cooperativeness of participating departments and faculty, and the career plans of its graduates.

William R. Jones
Lucy E. Salyer
Department of History
University of New Hampshire
Durham, NH 03824-3586

A Modular Course Unit on Business Ethics

As a result of the project, I transformed my standard course on the legal environment of business, adding materials to expose students to the rich relationships between law and ethics, and shared my findings and experience with colleagues. I also co-authored an article with Dr. David Risser, "Teaching Ethics in Business Law Courses," which will be published in the Commission's new series, "Teaching Resource Bulletins." The project developed beyond its original conception as a modular course unit. A certain notion of business ethics, best seen as a new paradigm or model for the field of business law, is key to the approach developed. Law is viewed not merely as rules but as a pool of values and perceptions which must be located within a wide array of normative phenomena. What began as a modular unit becomes a reconceptualization of the entire course.

The structure of the course is based on the way our individual values and social ideals become part of the environment of business. There are the levels of *ethical theory, institutional framework, organizational culture,* and *individual choice.* In the interplay of these four levels, we find the dynamism of our ideals in the business setting.

Reconceived in this way, the law course was offered during the Fall of 1990. First, I found that students needed concrete cases in order to appreciate the problems and applications of ethical theory. But, by presenting ethical theory in the beginning of the course, I was asking them to struggle with abstract ideas they found difficult to understand and apply. Second, students showed a broader and more immediate interest in legal doctrines than in ethical questions. I dealt with these difficulties by modifying the Spring 1991 offerings of the course in the following way. I included in the ethical theory section some controversial doctrines in contract and tort law. Once students became engaged with these legal problems, I showed how the controversies were rooted in conflicts of ethical theory. More generally, I stressed throughout the course the interconnectedness of legal and ethical problems, showing how ethical dilemmas can lead to legal problems and how many legal problems have an ethical dimension. This modified approach worked well.

Jeffrey Nesteruk
Department of Business Policy and Environment
Rider College
Lawrenceville, NJ 08648

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- ***Teaching Ethics in Business Law Courses*, by Jeffrey Nesteruk and David Risser**

Bulletins **are available in Fall 1991 at a modest charge. To order, write: Joshua Lazerson, ABA Commission on College and University Nonprofessional Legal Studies, 541 N. Fairbanks Ct., Chicago, IL 60611-3314.**

TV Law: Image and Reality
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driven. The organizing efforts around environmental racism offer an opportunity to take a second look at a number of structural features of urban industrial society which have produced conditions of economic and social inequality. We are forced to rethink housing access and patterns, land use decisions (for everything from transportation to retail outlets), urban and rural settings, land and water rights and access, educational access, the existence and location of medical facilities and employment opportunity, as well as occupational hazards posed to future generations of workers. Previously held assumptions are no longer functional; for example, the assumption that services exist but are not equally accessible. Paul Savoy (1991) reminds us that other liberal preconceptions have become equally dysfunctional in the hands of a conservative Court, one which consistently rules that citizens have no legitimate claims to government assistance (in the words of Chief Justice Rehnquist, "even when such aid may be necessary to secure life").

This conservative climate necessitates an expanded approach to civil rights. We can no longer expect consensus on the moral "correctness" of challenges to "separate but equal," nor acceptance of the need for equality of access as previously defined. We are confronted by a self-indulgent culture in a society which has lost its moral vision and political will. However, economic recession has made homelessness, infant mortality, poverty and hunger more immediate threats, ones which even the ideologues cannot limit by race. Savoy reminds us that the cost of chemical protection suits ordered by the Pentagon would provide health, education and medical service for 4 million women a year through Planned Parenthood; the cost of launching two Patriot missiles would provide health care for 13,000 homeless children through a mobile medical outreach program. What will the consequence be, if we continue to allow the rights of citizens to be limited to those which protect from government excess in the face of excess favoritism to corporations?

There may be some advantages to an expanded notion of civil rights, when we include the right to clean industry. The ideological shroud which conservatives have used to obscure civil rights issues may be lifted as we juxtapose rights of corporations and citizens. Examination of environmental racism offers an opportunity for a younger generation to develop its own understanding of and approach to inequality. The introduction of ideas regarding economic equality will stimulate controversy, but that cannot be avoided in a period of increasing economic restructuring.

In a climate which has exonerated market forces (thereby legitimizing *de facto* segregation), environmental issues offer an opportunity to reopen debate and analysis of the market. Issues which conservatives have raised to new ideological heights (reverse discrimination, victims' shouldering the burden of proof and "intention" in charges of discrimination, etc.) can be debated anew, as we broaden our vision of citizens' rights and identify the preservation of the earth's resources as a right superseding individual property ownership. By expanding our conception of rights we recognize a new form of politics, one which acknowledges basic services to citizens (e.g., housing, food, education) not simply as charity but as rights equal to property rights.

Cynthia Hamilton is Associate Professor of Pan-African Studies at California State University, Los Angeles, CA 90032.

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Teaching about Law in the Undergraduate Curriculum: The Contribution of Political Science. [published in the APSA's *Law, Courts and Judicial Process Section Newsletter,* Summer, 1985, pp. 1-5]. No charge.

Law, Liberal Education and the Undergraduate Curriculum. [published in *Legal Studies Forum,* Vol. 10, No. 1, 1986]. Reprints available. No charge.

Undergraduate Programs of Legal Studies, Law and Society, etc.: Overview and Tabular Summary. 1986; updated, 1988. No charge.

To request any of the above, write Joshua Lazerson, ABA Commission on College and University Nonprofessional Legal Studies, 541 N. Fairbanks Ct., Chicago, IL 60611-3314.

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